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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,668	07/02/2003	Gunter Holzner	81455-5560	7260
28765	7590	05/19/2004	EXAMINER	
WINSTON & STRAWN PATENT DEPARTMENT 1400 L STREET, N.W. WASHINGTON, DC 20005-3502			LAMM, MARINA	
		ART UNIT	PAPER NUMBER	
		1616		

DATE MAILED: 05/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/613,668	HOLZNER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Marina Lamm	1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is **FINAL**.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 1-14 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-14 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>7/2/03</u> .	6) <input type="checkbox"/> Other: _____.

## **DETAILED ACTION**

Claims 1-14 are pending in this application filed 7/2/03, which is a continuation of PCT/IB02/04749 filed 11/11/02, which claims foreign priority to PCT/IB01/02210 filed 11/22/01.

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 8 and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 8 and 9 are confusing because it is unclear when the recited steps are performed. It appears that these claims recite alternative methods of making the microcapsules rather than additional, further limiting steps of the method of Claim 7. Clarification is requested.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-6 and 11-14 are rejected under 35 U.S.C. 102(e) as being anticipated by either Glaug et al. (US 6,369,290) or Murphy et al. (US 6,555,098).

Glaug et al. teach deodorant articles containing an odor control powder comprising 0.5-4% of fragrance oil and 5-45% of sodium bicarbonate microencapsulated in 50-90% of starch. See Abstract. Murphy et al. teach cosmetic deodorant products containing encapsulated powder comprising sodium bicarbonate and 0.1-20% of a fragrance ingredient. See col. 2, lines 16-44; col. 3, lines 39-45; col. 4, lines 4-9; col. 8, lines 9-11; Example IV. The limitation "fireproofing agent susceptible of reducing the dust hazard explosive class of the microcapsule to an St-1 classification" is inherent in the prior art because the prior art teaches the same fireproofing agent as claimed in the instant claims, i.e. sodium bicarbonate. With respect to Claims 12 and 14, neither reference teaches the method of Claim 7. However, Claims 12 and 14 are in product-by-process format, and as such, it is the novelty and patentability of the instantly claimed products that need to be established and not that of the recited process steps. In re Brown, 173 USPQ 685 (CCPA 1972); In re Wertheim, USPQ (CCPA 1976). A claim to a composition defined by reference to the process by which it is produced, is not limited to compositions produced by the process recited in the claim. Scripps Clinic & Research Foundation v. Genentech, Inc. (CAFC 1991) 927 F2d 1565, 18 PQ2d 1001.

Thus, either Glaug et al. or Murphy et al. teach each and every limitation of Claims 1-6 and 11-14.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 7 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glaug et al.

Glaug et al. teach odor control powder comprising microencapsulated fragrance oil and sodium bicarbonate as discussed above. The microencapsulated particles are produced by the following method: (1) sodium bicarbonate is added to the aqueous slurry of the microencapsulating agent (starch); (2) the fragrance oil is added to the slurry; and (3) the slurry is spray-dried to obtain the microencapsulated particulate. See col. 3, lines 42-66. The reference is deficient in the sense that it teaches adding fragrance to the sodium bicarbonate/microencapsulating agent aqueous slurry rather than adding sodium bicarbonate to fragrance/microencapsulating agent aqueous emulsion as claimed herein. However, there appears to be no criticality in the order of adding the ingredients since the prior art recognizes and obtains the same result, i.e. microencapsulated fragrance/sodium bicarbonate obtained by spray-drying. One having ordinary skill in the art would have been motivated to determine the optimal order by routine experimentation because the reference demonstrates how to obtain the desired microcapsules.

***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 4,908,233; US 5,185,155; US 5,585,093; US 5,614,179; US 5,861,144; US 6,475,542.

8. No claim is allowed at this time.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marina Lamm whose telephone number is (571) 272-0618. The examiner can normally be reached on Mon-Fri from 11am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page, can be reached at (571) 272-0602.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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